

AMENDED IN ASSEMBLY JUNE 27, 2001

AMENDED IN SENATE APRIL 5, 2001

**SENATE BILL**

**No. 158**

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**Introduced by Senator Haynes**

January 31, 2001

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An act to add and repeal Section 1021.1 of the Code of Civil Procedure, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 158, as amended, Haynes. Attorney's fees: Riverside County.

Under law effective until January 1, 2001, in the Counties of Riverside and San Bernardino, a party to a civil action that made a settlement offer was entitled to an award of attorney's fees at the court's discretion, for services rendered after the offer was made, if the offer was rejected and the party to whom it was made failed to obtain a more favorable judgment.

This bill would reenact those provisions as to Riverside County only, to remain in effect until January 1, 2005. The bill would also require the Judicial Council *and the Superior Court of Riverside County, jointly, to make specified findings of fact* to assess whether the act increases the early settlement of cases, *as specified*, and *to report its their findings* to the Legislature by March 1, 2004, as specified.

*The bill would also declare the intent of the Legislature in this regard.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1021.1 is added to the Code of Civil Procedure, to read:

1021.1. (a) Reasonable attorney's fees may be awarded in an amount to be determined in the court's discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit.

(b) A party may be entitled, in the discretion of the court, to an award of attorney's fees under this section if all of the following conditions are met:

(1) The party has made an offer for judgment under Section 998.

(2) That offer was not accepted within the time provided in Section 998.

(3) The party to whom the offer was made thereafter failed to obtain a more favorable judgment.

The party making the offer shall be entitled to attorney's fees only for legal services rendered after the date of the offer.

(c) In exercising its discretion to award attorney's fees the court shall consider the following factors:

(1) The reasonableness or lack thereof, of a party's failure to accept an offer for judgment under Section 998 in light of the facts known to the party at the time which, in light of all of the circumstances, should have been known to the party. Reasonableness shall be determined by a consideration of at least the following matters:

(A) The then apparent merit or lack of merit in the claim that was the subject of the action.

(B) The closeness of the questions of fact and law at issue.

(C) Whether the offeror has unreasonably refused to furnish information necessary to evaluate the reasonableness of the offer.

(D) Whether the action was in the nature of a "test case," presenting questions of far-reaching importance affecting nonparties.

(E) The relief that might reasonably have been expected if the claimant should prevail.

1 (F) The amount of the additional delay, cost, and expense that  
2 the offeror reasonably would be expected to incur if the litigation  
3 should be prolonged.

4 (G) Those other matters that the court may deem relevant in the  
5 interest of justice.

6 (2) The amount of damages and other relief sought and the  
7 results obtained for the client.

8 (3) The efforts made by the parties or the attorneys to settle the  
9 controversy.

10 (4) The existence of any bad faith or abuse of legal procedure  
11 by the parties or the attorneys.

12 (d) In exercising its discretion to determine the amount of  
13 attorney's fees to be awarded, the court shall consider the  
14 following factors, except that in no event shall the amount awarded  
15 exceed a reasonable fee for the services actually rendered:

16 (1) Customary fees in the community in which the action or  
17 proceeding is pending charged by attorneys with similar  
18 experience or expertise.

19 (2) The time and labor reasonably required to be spent by the  
20 attorney or attorneys.

21 (3) The experience and ability of the attorneys generally within  
22 the profession and also with respect to the action or proceeding.

23 (4) The novelty and difficulty of the questions involved and the  
24 skill required to perform the services properly.

25 (5) The extent to which the acceptance of the particular matter  
26 imposes extraordinary burdens on the attorney or attorneys (A) by  
27 way of precluding other employment, (B) by the time limitations  
28 imposed by the client, or (C) by the circumstances.

29 (6) Whether the fee is fixed or contingent.

30 (7) Those other factors that the court may deem relevant in the  
31 interest of justice, including any of the factors described in  
32 subdivision (c).

33 (e) Nothing in this section shall be construed to repeal or  
34 modify any other statutory provision for the award of attorney's  
35 fees or to diminish any express or implied contractual right which  
36 a party to a civil action may otherwise have to obtain an award of  
37 attorney's fees for the prosecution or defense of an action.

38 (f) No attorney's fees shall be awarded pursuant to this section  
39 in any of the following instances:

1 (1) Against a party who is proceeding in forma pauperis or a  
2 party whom the court has found not to have the financial ability to  
3 pay fees or who would suffer an unreasonable financial hardship  
4 if ordered to pay fees.

5 (2) For or against any party with respect to any cause of action  
6 under which an award for reasonable attorney's fees is authorized  
7 or required by any other federal or California statute.

8 (3) For or against any party with respect to any cause of action  
9 or proceeding commenced or prosecuted under Title 7  
10 (commencing with Section 1230.010) of Part 3.

11 (4) For or against any party in any action in which one or more  
12 plaintiffs seek to proceed as a class under Section 382.

13 (5) For or against any party as to any cause of action the  
14 gravamen of which is personal injury, wrongful death, or  
15 injunctive relief.

16 (g) The determination under this section shall be made after the  
17 final disposition of the action.

18 (h) This section shall apply only in Riverside County.

19 ~~(i) The Judicial Council shall assess the impact of this section~~  
20 ~~upon the courts to which it applies and shall report its findings to~~  
21 ~~the Legislature on or before March 1, 2004. The report shall~~  
22 ~~include a determination of the number of filings in the affected~~  
23 ~~courts, the number of cases in which a settlement offer is made, the~~  
24 ~~number of cases settled pursuant to the offer, and the number of~~  
25 ~~cases in which attorney's fees were awarded pursuant to this~~  
26 ~~section. The effectiveness of this section shall be determined based~~  
27 ~~on whether, and to what extent, this section increases the early~~  
28 ~~settlement of cases.~~

29 ~~The presiding judges and clerks of the courts in which this~~  
30 ~~section applies shall cooperate with the Judicial Council in the~~  
31 ~~assessment and report required by this subdivision.~~

32 ~~(j) This section shall remain in effect only until January 1,~~  
33 ~~2005, and as of that date is repealed, unless a later enacted statute,~~  
34 ~~that is enacted before January 1, 2005, deletes or extends that date.~~

35 *(i) The Judicial Council and the Superior Court of Riverside*  
36 *County shall jointly assess the impact of this section upon the court*  
37 *to which it applies and shall report their findings to the Legislature*  
38 *on or before March 1, 2004. The report shall include a*  
39 *determination of the number of filings in the affected courts, the*  
40 *number of cases in which a settlement offer is made, the number*

1 of cases settled pursuant to the offer, the number of cases in which  
2 the offer is rejected and the party to whom it was made fails to  
3 obtain a more favorable judgment, and the number of cases in  
4 which attorney's fees were awarded pursuant to this section. The  
5 effectiveness of this section shall be determined based on objective  
6 data showing whether, and to what extent, this section increases  
7 the early settlement of cases compared to the experience prior to  
8 its initial enactment in the courts to which it has applied, and the  
9 experience since its initial enactment of the courts in other  
10 counties to which it has not applied. The presiding judge and clerk  
11 of the court in which this section applies shall cooperate with the  
12 Judicial Council and the Superior Court of Riverside County in the  
13 assessment and report required by this subdivision.

14 (j) This section shall remain in effect only until January 1,  
15 2005, and as of that date is repealed, unless a later enacted statute,  
16 that is enacted before January 1, 2005, deletes or extends that date.

17 (k) It is the intent of the Legislature that this section shall not  
18 be reenacted unless and until it is shown by objective data that this  
19 section independently and substantially increases the early  
20 settlement of cases.

